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ABSTRACT

Despite differences among state laws authorizing collective bargaining, and despite the variety of administrative and legal structures that enforce collective bargaining rights and obligations, a considerable degree of consensus has evolved throughout the states. Accordingly, this chapter highlights the major features of the law with respect to collective bargaining among public school employees as it has evolved to this point, identifies trends, and speculates on future issues. The first part reviews constitutional issues applicable to labor relations, including rights to organize under the First Amendment, exclusive representation and freedom of speech, waiver rights of unions, and compliance with labor laws by the public sector. Subsequent sections discuss cases pertaining to the authority of state or municipal jurisdictions to bargain with employee representatives in the absence of a statute, recognition of unions and representation questions, rights and obligations of the exclusive bargaining representative, scope of bargaining, grievance procedure, effect of the legislative process on contract funding, negotiations impasse, strikes, and "sunshine" or open meeting laws. (TE)

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Collective Bargaining Issues in Public School Employment

Hugh D. Jascourt

It is difficult to generalize about collective bargaining in public education because it is such a dynamic process. Its focus changes as relationships change and as different priorities arise. Currently, for example, fiscal crises in school districts and declining enrollments permeate most collective bargaining relationships. Because of the depressed economy, the political climate is unfavorable to unions in general; and because school systems are the largest category of local expenditures of public funds, the political climate is unfavorable to teacher unions in particular. As a result of these and other factors, public attitudes will affect the goals and positions of public employers. In turn collective bargaining is directly affected.

It is also difficult to make generalizations about collective bargaining in public school employment. Only 31 states have laws authorizing collective bargaining, and few of these laws are alike.[1] Some cover all public employees; some cover just teachers. A further complication is the variety of administrative and legal structures that enforce collective bargaining rights and obligations. Nevertheless, collective bargaining by teachers does exist in every state regardless of the euphemism applied to it. In states such as Ohio, which has no statute sanctioning collective bargaining, those unions with exclusive recognition sometimes exercise more power and obtain stronger enforcement of their rights by the courts than their counterparts in states that have statutes authorizing

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collective negotiations. Despite these differences, a considerable degree of consensus has evolved throughout the states. Nevertheless, one should be familiar with local law and decisions pertaining to it in order to apply accurately any generalization to specific local circumstances. Also, keep in mind that decisions from other states are frequently argued as precedent and often may have that effect in cases of initial impression or even modification of previously judge-made law in a particular state.

This chapter will highlight the major features of the law as it has evolved to this point, identify trends, and speculate on future issues.

Constitutional Issues

Until recently the primary issues in public sector labor relations involved constitutional rights. In fact, more often than not a lead case involved public education, with school boards invariably one of the parties.

The seminal cases were both decided in 1968. In *McLaughlin* v. *Tilendis* the Seventh Circuit Court of Appeals held that the First Amendment protected the right of teachers to engage in union organizing activity;[2] and in *Pickering* v. *Board of Education* the Supreme Court delineated the narrow limits a school board as an employer could place on its employees, particularly with regard to public criticism of the employer.[3] For many years the major cases and major issues were expressed in constitutional terms, culminating in 1979 with *Abood* v. *Detroit Board of Education* in which the Supreme Court upheld the constitutionality of the agency shop in school districts, giving the union exclusive recognition as in the private sector model.[4] Specifically, the Court ruled that the union could collect service fees from teachers who were not members of the union.

Thereafter, the courts became increasingly reluctant to deal with constitutional issues involved in labor relations cases. For example, in a 1978 case in Ohio the federal district court complained:

> [t]his case presents the all-too-familiar situation in which a dispute, commonplace in the private sector, becomes constitutional litigation by virtue of the fact that a public employer [the school board] is involved, rather than private entities, and the [plaintiff is] therefore, able to turn a problem of labor relations into a constitutional issue.[5]

Today, the "larger" issues are seldom raised. Instead, attention tends to be directed at the collective bargaining process itself, with the exception of cases involving affirmative action, the impact of seniority on reductions in force, contractual provisions affecting maternity leave, or the looming issue of "comparable worth." Plaintiffs are no longer trying to create due process or other constitutional rights applicable to labor relations.[6] Perhaps this is so because of a perception by unions that there

is not presently a receptive judicial climate. It may also be due to the general acceptance of the doctrine that the state as an employer cannot ask an employee to surrender a right he or she would otherwise be entitled to as a private citizen. Individual rights are most likely to be diminished by attacking the principle that constitutional rights are involved when the government takes action with respect to an employee. Taking its place will be the theory that "governmental action" is not involved when government, as an employer, deals with its employees in a manner that does not affect their rights as private citizens and allows a public employer rights comparable to a private employer dealing with its employees.

The issues in labor relations in the near future will deal with specific problems and are less likely to have effect on the entire body of constitutional law. One recent battleground has been the role of the exclusive representative with regards to free speech, as in the right to use a school's internal mail system. Commonly, the exclusive representative negotiates a contractual provision to preclude competing unions from such use. The Sixth Circuit Court upheld the constitutionality of such a policy as rationally related to the goal of preserving labor peace within the school system.[7] However, the Seventh Circuit Court viewed such a policy as unconstitutional, explaining that, because limitation of speech on the basis of its content or on the basis of the identity of the speaker usually requires rigorous judicial scrutiny, there must be a compelling state interest for such limitation. In other words, it was not enough for the limitation to be merely rationally related to a legitimate state interest. The court found no clear proof that the incumbent union's execution of its duties would be significantly impaired by permitting access to the school's mail system, and that claims of substantial disruption amounted to mere speculation; therefore, disparate access to communication channels (as distinguished from other rights such as dues checkoff) could not be justified.[8] The Supreme Court overturned the Seventh Circuit Court on the basis that the school mail system is not a public forum and that the access policy, based on the union's status as exclusive representative, is constitutionally permissible since it is a reasonable means of ensuring labor peace. In short, exclusive recognition was a sufficient distinction.[9]

The issue of whether a union may waive the constitutional rights of those it represents is another issue on the horizon. In one case a federal district court ruled that teachers could waive their academic freedom through a collective bargaining agreement and, as a consequence, the school board could ban books it otherwise could not prohibit.[10] However, on appeal the Tenth Circuit Court held that the waiver was not clear and express enough and that the school board could exclude the books in contest on other grounds.[11] There have been a few other cases

establishing such a waiver, but the union's authority to do so is less than clear and is likely to be challenged.[12]

In a case involving termination of a teacher, the plaintiff claimed that *one* of the employer's reasons for termination was the plaintiff's exercise of free speech, which is protected under the First Amendment. In ruling on this case, *Mt. Healthy City School District Board of Education* v. *Doyle*,[13] the Supreme Court held that the teacher could not be reinstated unless it was shown that his discharge would not have occurred unless the board desired to penalize the teacher for his exercise of free speech. The Court explained that an employee should not be able to shield himself from discipline by raising as a defense that one of the employer's reasons was improper. Borrowing from the *Mt. Healthy* context, the National Labor Relations Board subsequently applied a like test to unfair labor practices, changing its past policy of allowing one bad reason to taint all other reasons or defenses.[14] The latter test had been commonly used by state public employment relations boards. Now there is a question whether states will follow the NLRB's new policy, and also the question — which has yet to be settled in the private sector — of where the burden of proof resides once the existence of mixed motives has been established.

If the future brings no significant additions to the number of states sanctioning collective bargaining for public employees and if some of the current states with skeletal sanctioning laws do not amplify their statutes, with a change in political climate the Supreme Court's decision in *National League of Cities* v. *Usery*[15] undoubtedly will be reexamined and will become a pressing legal issue. The Supreme Court scuttled what had appeared to be almost a certainty: the passage of a national public sector law. Its decision held that Congress lacked the constitutional power to apply the Fair Labor Standards Act to state and local governments. However, the case was decided by a narrow 5-4 majority, and the decision may be subject to review and modification in later cases. The basic proposition in *Usery* was that Congress "may not force directly on the states its choices as to how essential decisions regarding the conduct of integral government functions are to be made."[16]

The key word in the above quote is "force." The word takes on added meaning when it is realized that in order for municipalities to take over private transit companies and to receive federal funds under the Federal Urban Mass Transportation Act, the municipality must comply with certain labor law requirements. Thus far, the courts have held that such a requirement is not unconstitutional since a locality is not compelled to seek federal funds and, therefore, participates at its own option.[17] The obvious question is whether it would be constitutional to condition receipt of revenue sharing upon public sector labor relations requirements or whether the reliance on federal funds *de facto* forces a

choice on state governments with regard to the conduct of integral government functions. The answer may be one of the most hotly debated topics of the decade and may indicate how the future of nationally established labor relations standards will affect public education.

Authority to Bargain in Absence of Statute

For many years there had been debate as to whether a state or municipal jurisdiction could engage in collective bargaining with a representative of its employees when there was no express statutory authority to do so. Now, in most states without statutory authorization, the courts have accepted that by virtue of the power to "do business" or the power to hire teachers and to fix their salaries, a school board has the authority to engage in a collective bargaining relationship.[18]

In these states there is no compulsion to negotiate; there are only voluntary arrangements. As a corollary, there is no enforcement machinery, since, in effect, there are no obligatory rights. However, courts in these states are prone to fill the void. For example, in Ohio there is no statute authorizing negotiations, but there is a law prohibiting public employee strikes. A court enjoined a strike by teachers, but went beyond and required the school board to enter into an oral contract it reached with the union but later refused to sign and execute.[19]

Where collective bargaining exists due to union power rather than statutory right, only the strongest unions have obtained recognition. Due to such strength, they often possess power and contractual rights beyond what a statute would accord. Difficulties are likely to be faced in the future when new state laws preserve such bargaining and contract rights and privileges but do not grant such rights and privileges to others. In fact, the existence of such prior rights and privileges sometimes results in broader rights for unions than otherwise would have been probable.

Recognition of Unions and Representation Questions

Generally, in the private sector unions have been accorded recognition to represent smaller employee units than is permitted in the public sector. Although larger units are characteristic of the public sector, the extent to which fragmentation should be allowed to exist continues to be an issue. Because a governmental employer usually has larger and more diversified groups of employees, it would be faced with both cost and administrative problems if it had to bargain with separate units of employees represented by different unions. However, homogeneity of a bargaining unit may help to promote stability, and a union may have difficulty in representing workers who do not share the same goals or aspirations. Also, when a smaller group of workers is swallowed up by a

larger group, the smaller group may have difficulty in obtaining meaningful representation.

In most school districts professional education employees are in a single unit, even if they are noninstructional. Similarly, most nonprofessionals are lumped into one or two units. In addition, there has been a tendency to add other employee groups to these already large units. Two recent cases in Pennsylvania are illustrative. In one case the state's intermediate court upheld the addition of substitutes, who were certified teachers employed on a full-time basis, to the existing bargaining unit of teachers.[20] In another case the court sustained the inclusion of support personnel from the school's adult education program in the unit of support personnel serving the regular secondary program.[21] Questions to be faced in the future include how far these accretions will be permitted to go and will the courts reexamine the inclusion of occupational groups such as librarians, guidance counselors, or nurses in teacher units.

A far larger problem looms as the result of hybrid arrangements between private and public employers, multiple public employers, or different levels of governmental employers designed to achieve efficiency as a result of fiscal constraints. For example, a Maine bus company was held to be acting on the behalf of the school district because of the degree of control the district maintained over the details of the work to be performed. The school district supplied the buses to the company, which could be used only for transportation of city school children. Further, the school district remained responsible for compliance with state and federal regulations pertaining to equipment on buses, retained veto power over the hiring of any school bus driver, and supplied all gasoline to operate the buses.[22] The NLRB apoears to be applying a similar degree-of-control test. However, in noneducation cases, other factors, such as monetary control, have been used to determine who is the public employer. The result sometimes has been a finding that there are co-employers.[23] If state governments or state boards of education continue to assume a greater role in financing public education or in imposing requirements on local education, the identity of the employer can be a critical issue to unions that wish to negotiate on major decisions not controlled by the local school board.

An off-shoot of these hybrid arrangements is the difficulty of determining who are employees. For example, are interns, who teach in a school district for no more than one term and receive a stipend of $2,000, employees when they continue to be registered as college students and pay tuition, although their sole academic responsibility is their internship? Such a case occurred in Wisconsin where the court held that the interns were employees of the school district under the state's collective bargaining statute, but were placed in a bargaining unit apart from the regular teachers due to their short-term appointments and their

expectations to be hired elsewhere.[24] As job sharing and other arrangements, such as private sector employees teaching in public schools for specified durations, continue to develop, the determination of who is an employee will become even more critical.

Another issue in public sector collective bargaining is differences of opinion concerning who is a supervisor or a management official. In the private sector, managerial employees have no statutory rights, although an employer can voluntarily accord recognition to a union that represents them. In the public sector, employers seldom are given any choice. Either supervisors are excluded, are mandatorily included in an existing unit, or are represented in a separate unit. There is a further division of opinion as to whether administrators are also supervisors. Frequently, the state statute supplies these answers, or sometimes a state public employee relations board (PERB) makes the decisions. In one case the New Hampshire Supreme Court upheld a PERB decision granting recognition to a unit of 13 elementary school principals and eight secondary school assistant principals, while excluding three junior high school principals, the high school principal, and his two associate principals. The determination that certain principals were agents of management was based on their actual involvement in managerial functions rather than on the title they held.[25]

The potential for conflict of interest in such situations is illustrated by an agreement that preceded the statute that now exists in Iowa. By this agreement the school district included principals and supervisors in the bargaining unit and provided that it would not discriminate against any unit member for membership or participation in union activities. Nevertheless, the school district refused to renew the contract of a principal who acted as the chief negotiator for the union, citing this activity as an "extraordinary example of his . . . failures in judgment." The Eighth Circuit Court upheld the constitutionality of the nonrenewal on the basis that the principal's acting as chief negotiator constituted a conflict of interest.[26]

Rights and Obligations of the Exclusive Bargaining Representative

In the private sector an exclusive representative has a duty to represent all employees in the unit. This duty of fair representation is complicated in the public sector when the same union may represent both supervisory personnel and subordinates. The duty may be tested any time a unit employee complains that another unit employee received a promotion or some other preferential treatment. Such a situation faced the Rhode Island Supreme Court when a successful applicant for department head claimed that the teachers union had breached its duty to him when the union pressed the grievance of an unsuccessful applicant who

had more seniority. The court applied the private sector standard that the union "must choose its side in a nonarbitrary manner based on its good faith judgment as to the competing claims." The union does not have to remain neutral since to do so would weaken its ability to represent employees and to enforce the contract. In this case the union was found to have breached its duty because it never contacted the successful applicant and never investigated the qualifications of two other teacher candidates.[27]

The private sector rule is now the general rule in the public sector, although the wide range of reasonableness that must be accorded to a bargaining representative recently was allowed to be judged by a jury.[28] The same duty also applies in the bargaining process, even though a specific agreement may give one component of membership an advantage over another.[29] However, a collective bargaining agreement cannot waive equal employment opportunities, such as those related to sex or race, since to do otherwise would be to defeat the legislative purpose of nondiscrimination in employment.[30]

Under exclusive representation, an employee cannot personally negotiate with the employer. This doctrine was further extended in the case of a Pennsylvania nonunion teacher who did not want to participate in a negotiated dental plan.[31] However, in *City of Madison School District No. 8* v. *Wisconsin Employment Relations Commission* the Supreme Court ruled that a teacher did have the right at an open school board meeting to present a petition opposing the agency shop provision that his exclusive representative was advocating.[32] The Court viewed the teacher as a citizen in the community and ruled that the school board was precluded from barring speakers on the basis of employment or the content of their speech. The dual role of a person as an employee and as a citizen creates difficulties for traditional concepts of labor relations, which are likely to continue in the future.

The Pennsylvania decision referred to may lead to a significant decision on a different issue of minority rights, i.e., nonunion members. A case presently on appeal to the Supreme Court involves a decision that upheld a ratification election in which nonunion members were not allowed to vote but were notified and invited to come to the ratification meeting to ask questions and express their opinions. The Pennsylvania court interpreted these actions as showing that the union members did not disregard the "interests of their nonunion fellows."[33]

Another conflict between the rights of the minority and the rights of the exclusive representative in acting for the entire unit involves the traditional concept of the "agency shop." An earlier issue associated with the agency shop was the union dues "checkoff," which is no longer in dispute except in Wisconsin where the high court of that state found "no reasonable relationship between granting of an exclusive checkoff and

the functioning of the majority organization in its representative capacity."[34] Another controversial issue was the mandatory payment of a service fee to the union by nonmembers in the bargaining unit. The Supreme Court, in *Abood* v. *Detroit Board of Education*,[35] upheld the agency shop provisions and proclaimed that such provisions do not deny nonunion teachers their First Amendment rights to freedom of association to the extent that agency shop fees are used to pay for the expenses of collective bargaining, contract administration, and grievance adjustment. The Court further declared that agency shop fees may not be used to support ideological causes opposed by unit members or for functions not germane to the union's representative role. The Court explained that the considerations of labor stability in the private sector have no less weight in the public sector.

The Court ruling in *Abood* has created a favorable legislative climate for the agency shop. In fact, the Ohio Supreme Court has enforced an agency shop agreement even in the absence of a law authorizing it.[36] However, two legal controversies persist. One issue is whether the discharge of a teacher for nonpayment of the required union service fee conflicts with the state teacher tenure act. There is no consensus on this point.[37] The other battle is over the formula used to assess the fees to be paid by the nonmember that are used solely for bargaining purposes and not for so-called "ideological" purposes. Such a case did reach the U.S. Supreme Court but was dismissed for want of a substantial federal question.[38] The same issue has surfaced when unions have properly identified the portion of the dues used for political or ideological purposes but collected them using a "reverse checkoff," which requires the nonmember to object to payment by filling out a form in advance or by specifically requesting a refund.[39]

Scope of Bargaining

Traditionally, in collective bargaining in the private sector the obligation of the parties is to make a good faith attempt to reach an agreement with respect to wages, hours, and other conditions of employment. This is also true in those public sector jurisdictions with comprehensive bargaining laws, although the scope of subjects open to bargaining may differ among jurisdictions. Some states specify those subjects that are open to negotiation and/or those that are not.

In most jurisdictions timing is a critical aspect of the bargaining process, particularly in the context of impending legislative action. The fact that laws or regulations are changed may not relieve the public employer of a prior bargaining obligation. A case occurred when a Connecticut city held public hearings to consider a residency requirement for future employees. The court held that the union did not waive its rights by appearing at the hearings and by later failing to present a bargaining pro-

posal, since the union was not obliged to anticipate that the ordinance would survive the political process and become law, especially when that process took 21 months. To require bargaining on every proposal affecting negotiable matters, the court explained, would place too onerous a burden on both employers and employees. Therefore, the union did not have to demand negotiations while the measure was under legislative consideration.[40] Similarly, the Minnesota Supreme Court enjoined the contracting out of bus services even though the buses had been sold, since the school board had violated an obligation to negotiate.[41]

The aspect of the obligation to negotiate that remains largely unsettled revolves around which subjects a school board must refrain from changing without first dealing with the exclusive representative. A Kansas court, which has narrowly construed the scope of bargaining, held that this obligation applied to changing a six-period class day to a seven-period class day.[42] A New Jersey court held the obligation was not applicable to changes in teaching modules that did not lengthen the school day. The court explained, "without some measure of flexibility constant battles would be urged over every change in format, with each change viewed as an opportunity to extract more concessions."[43] A New York court held that this obligation did not extend to changes that are not mandatory subjects of bargaining, which in this case was the length of individual employment contracts. The court's rationale was that since the subject was not negotiable the employees were not deprived of any rights by the change.[44]

Another aspect of the obligation to bargain not usually specified in a state law is the interrelationship with other laws. The trend has been to allow collective bargaining supremacy over laws, unless there is a specific prohibition against this in the collective bargaining statute. In Illinois, which does not have a comprehensive bargaining statute, a statute that gave the school board power to transfer principals was not construed to preclude a negotiated agreement that before a principal is transferred to a lower administrative grade, he or she had certain negotiated procedural rights.[45] In another Illinois case, where the Workmen's Compensation Act provides an employee with a statutory remedy for accidents associated with employment, the court held the act did not preclude parties from negotiating supplemental benefits.[46]

A future area of conflict is in the relationship of collective bargaining to affirmative action and tenure requirements. In Michigan a collective bargaining agreement required a school board to lay off first those teachers most recently hired. When layoffs were prompted by a fiscal crisis, the percentage of black teachers was reduced to 8.9% despite an earlier court order to desegregate the school system by attempting to raise the black faculty percentage to 20%. A federal district court invalidated the layoff of black teachers, explaining that "the absence of

discriminatory motive makes little difference since the remedy was needed to provide role models to the black community and to prove to its black students that blacks are not always the ones who will bear the brunt of layoffs during times of financial hardship."[47] In another case a Minnesota court upheld the right of a union to waive tenure rights but not to override a legislative scheme to deal with the problem of declining enrollments.[48] The task facing courts in the future will be to determine what special requirements are not superseded by collective bargaining agreements.

The precise scope of bargaining will continue to depend on the definitions and limitations under state statutes. Some statutes exclude specific subjects dealing with working conditions on the theory that management should not have the discretion to bargain away functions for which it is accountable to the public. Other statutes prohibit bargaining on "matters of inherent managerial policy" or on "educational policy." Since many matters affect both the working conditions of teachers and the exercise of management prerogatives, most state courts have arrived at a balancing test rather than ruling that a subject must be negotiated because working conditions are affected or that a subject is prohibited from negotiation because management policy is affected. The balancing test has become prevalent regardless of the wording of the statute, even if the statute contains no management rights provision. Illustrative of this test, the Oregon Employment Relations Board found mandatorily negotiable a union proposal that a teacher be allowed to remove from the classroom a student whom the teacher identified as a "discipline problem." The threat of immediate physical danger to the teacher was held to outweigh the educational policy concerns involved.[49]

Another widely recognized rule has been the requirement that management negotiate on the impact or implementation of a policy that is itself outside the scope of bargaining. The Minnesota Supreme Court held teacher-transfer policy to be a matter of inherent managerial policy but found negotiable a proposal to make disputes over the school district's adherence to transfer criteria subject to binding grievance arbitration, since the proposal affected only the application of management's right.[50]

Recently, there has been an increasing number of bargaining demands made by management. At the same time, there has been a rising number of issues related to layoffs and reductions in force. For example, when an Iowa school board proposed that school administrators retain their bargaining unit seniority in their major teaching area, the Iowa Supreme Court ruled that the union could not be compelled to negotiate on benefits to employees currently outside the unit.[51]

It is not now known how far courts and PERBs will go in holding negotiable union proposals that limit a school board's ability to react to

economic constraints. The Maine Supreme Court upheld the negotiability of a proposal that contracting out work "shall not cause the discharge or layoff of any member of the bargaining unit."[52] A New York court upheld a negotiated agreement prohibiting the termination of unit employees for budgetary reasons and forbidding the abolition of programs during the life of the agreement.[53]

Another issue to watch is whether the scope of bargaining will be expanded where there is no legal right to strike, following the example of the Michigan Supreme Court's view that the less power the union has should be counterbalanced by a broader legal right at the bargaining table.[54] At the same time, the prohibited area has become enlarged where changing public attitudes have been translated into "policy." One example is a decision of a Pennsylvania court, similar to court decisions in several other states, finding that a school board had no obligation to bargain on the school's extension of a ban on smoking in school buildings to teachers, as well as students. The court viewed the board's decision as educational policy, which outweighed the interests of teachers.[55]

Grievances

The grievance procedure incorporated in collective bargaining agreements is a mechanism that provides for interpretation of contract provisions when disputes arise over improvident wording or unforeseen situations. The grievance procedure also allows a union to contest an alleged abuse of management discretion in areas in which a union did not wish to negotiate, or was prohibited from negotiating, on the management's right to make a decision. When a grievance is unable to be resolved by the parties, an arbitrator is called in to render a judgment.

The competency of an arbitrator, rather than the school board, to judge employee complaints has long been recognized.[56] Nevertheless, the largest single area of labor relations litigation has involved arbitration, whether in terms of contesting whether a grievance is subject to arbitration or in terms of challenging the decision rendered by an arbitrator. Most jurisdictions adhere to the private sector presumption that grievances are subject to arbitration; and most, such as the Connecticut Supreme Court,[57] have specifically embraced the "positive assurance" test. Under this test, judicial inquiry is limited strictly to the question of whether the party challenging arbitrability did agree to arbitrate such a grievance. In this context, an order to stay arbitration is granted only when it may be said with "positive assurance" that the arbitration clause is not susceptible to being interpreted as covering the asserted dispute. If there are doubts, then the decision is resolved in favor of coverage under arbitration. In addition, if there are several appeal channels, the grievance arbitration route will be preferred, as illustrated by a Pennsylvania case of an employee who was denied the

right to sue in court for interest on salary that was paid late, since the grievance procedure was held to be exclusive under the terms of his contract.[58]

The only major departure from the doctrine of presumption of arbitrability was a New York Supreme Court case in which the court believed there were equally persuasive arguments for and against a teacher's grievance being construed as subject to the arbitration provision in the negotiated contract. The court held that it could not imply arbitration and that there had to be a clear and unequivocal agreement that the employer intended to refer the issue to arbitration "inasmuch as the responsibilities of the elected representatives of the taxpaying public are overreaching and fundamentally nondelegable."[59] Despite the respect generally given to the New York court, the decision has yet to serve as a precedent for other cases. In fact, the same court ruled shortly thereafter in favor of arbitrability in cases that did not appear to meet its clear and unequivocal standard.[60]

The public sector differs from the private sector with respect to negotiability. In the private sector, an employer may bargain on a matter upon which it is not obligated to negotiate. In the public sector, a prohibited subject is just that. The employer may not bargain on such a subject; and if it does, the provision is unenforceable. In cases where a union initiates action to arbitrate a provision in a contract, it is in reality an action to enforce that provision. In these cases a court will preclude arbitrability despite the clear intent of the contract, as did the Maine Supreme Court in refusing to enforce a provision prohibiting a school board from hiring a teacher from outside the school system when there were applicants from within the system.[61]

Normally, the arbitrator decides whether a grievance is unrelated to the grievance provision or is clearly frivolous or spurious. New York has strayed from this practice and has denied arbitrability where "the lack of specificity in the wording of the grievance makes it impossible to determine intelligently whether or not the grievance relates" to the contractual provision claimed to be the basis for arbitrability.[62] A major issue of the future may be whether this interpretation will be adopted in other jurisdictions.

Another basis for claiming that a grievance is not subject to arbitration is that the remedy requested is impermissible. The Massachusetts Supreme Court rejected this defense as applied to a tenure situation on the basis that, if a violation were found, the school committee might voluntarily accede to the arbitrator's recommendation or the arbitrator might be able to fashion a remedy that would fall short of intruding on the school committee's exclusive domain.[63]

Similar to the presumption of arbitrability, courts have confined the review of arbitrators' decisions to very narrow grounds. Nevertheless, a

large portion of the caseload in public sector labor relations involves appeals of the arbitrator's decision. The degree of deference to the arbitrator is revealed by this statement of the Rhode Island Supreme Court: "As a general rule, when a party claims that the arbitrators have exceeded their authority, the claimant bears the burden of proving this contention, and every reasonable presumption in favor of the award will be made. . . . the mere fact that the arbitrator misconstrues the contract or the law affords no basis for striking the award."[64]

The Iowa Supreme Court explained the restrictive view of judicial involvement in the arbitration process in this manner:

> Arbitration is a faster process, draws on the expertise of persons in the field and is less expensive. To allow a court to "second guess" an arbitrator by granting a broad scope of review would nullify those advantages. Most important, limited judicial review gives the parties what they have bargained for — binding arbitration, not merely arbitration binding if a court agrees with the arbitrator's conclusion.[65]

In affirming that in the absence of complete irrationality an arbitration award would not be subject to judicial revision, the New York Supreme Court revealed frustration with the frequency with which public policy is raised as a school board defense and used these words to stem the flood of appeals:

> Every collective bargaining agreement involves some relinquishment of educational control by a school district. Only when the award contravenes a strong public policy, almost invariably an important constitutional or statutory duty or responsibility, may it be set aside.[66]

Effect of the Legislative Process

The most significant difference between the public and private sector is that in the public sector the funding of an agreement is subject to a public process, and frequently a major portion or all of the funding is in the control of a body not a party to a negotiated agreement. Problems arising when negotiated agreements cannot be fulfilled because of inadequate funding have not reached the courts in sufficient numbers to establish broad legal precedents. However, questions arising out of legislative refusal to fund contracts will likely be a significant issue in court cases over the next several years, out of which will come important decisions affecting other aspects of labor relations.

In the few cases heard thus far, the courts have generally upheld contracts previously in existence. When the citizens of California limited tax revenues through the passage of Proposition 13, the state legislature responded by enacting a law to void any collective bargaining agreement by a local agency that called for a salary increase in excess of that granted to state employees. Consequently, when the state employees received a

zero increase, some agencies refused to grant increases required by contracts already in effect. Noting that "an increase in wages is frequently the very heart of an employment contract" and that the union may have traded off other benefits to secure such wages, the state supreme court held that collective bargaining agreements had the same protections as any other contract and could not be so impaired.[67]

The Massachusetts Supreme Court rendered the extraordinary remedy of affirming an injunction to compel the mayor of Boston to submit to the city council a request for a supplemental appropriation of $12.1 million to fund an executed agreement between the teachers union and the school committee and not to veto the city council's appropriation. The court viewed the mayor as having no bargaining or appropriation function and, therefore, only a ministerial role with no authority to frustrate or delay the appropriation process. The court also enjoined the city council from setting the tax rate for the city until the supplemental appropriations were properly acted on, because of the irreparable harm that would have occurred had the tax rate been set prematurely.[68]

In contrast, the Illinois Supreme Court reversed an appellate court decision and held, over a vigorous dissent, that a school board did not violate its contractual obligation to the union when it closed school a day early and did not pay school employees for that day in response to a projected $52 million operating deficit. The court construed the state school code as empowering the school board to control budgetary considerations and, therefore, the agreement could not preclude the school board from exercising such powers.[69] Similarly, a Tennessee court held that an agreement fixing a schedule of wage increases over a five-year period of time was dependent each year on funding by the county commissioners and, therefore, was not binding for that year until such approval. The union's only remedy was to renegotiate the contract when funding was insufficient.[70]

Negotiations Impasse

Most states compel a negotiations impasse to go to mediation and fact finding and/or arbitration. Some statutes provide that such procedures must be used if agreement has not been reached at a specified time prior to the budget submission date. There have been many challenges to the constitutionality of laws compelling a school board to comply with the order of an arbitrator as to the terms of a new collective bargaining agreement. In Maine, where an earlier constitutional challenge had failed, a school committee claimed that the law provided inadequate safeguards to protect against unfair and arbitrary decisions. The state supreme court denied the challenge on the basis that the ever-widening use of arbitration had resulted in the evolution of criteria that have become inherent in "today's arbitration process." Citing cases from Min-

nesota, New Jersey, and Pennsylvania that were not related to education, the court added:

> Formulation of rigid standards for the guidance of arbitrators in dealing with complex and often volatile issues would be impractical, and might destroy the flexibility necessary for arbitrators to carry out the legislative policy of promoting the improvement of the relationship between public employers and their employees.[71]

In effect, the arbitration process is viewed as a substitute for the strike. Because most jurisdictions do not grant the legal power to strike, a growing number of decisions have held that this limitation on the union's power should be offset by limitations on the school board's rights to engage in "self-help." For example, the Florida Public Employment Relations Commission has held that although a collective bargaining agreement has expired, the school board must maintain the status quo with regard to continuing wages, hours, terms and conditions of employment, and grievance procedures, since "to conclude otherwise would be to promote disharmony at a time when harmony is most needed."[72] The New Jersey Supreme Court viewed such a unilateral change as frustrating the statutory objective of mandating collective bargaining; and the Pennsylvania Supreme Court held that such a change was intended to be coercive and, therefore, was unlawful.[73]

Another issue likely to spark future controversy is the question of when a party can take off the bargaining table a permissive subject (i.e., one for which there is no obligation to negotiate but which the party receiving the proposal may at its own option agree to negotiate). Normally, permissive subjects may not be pressed to impasse. However, the Massachusetts Supreme Court held that once parties had agreed voluntarily to go to impasse arbitration, proposals in the permissive area could properly be considered by the arbitrator, at least if they are not so central to educational policy that the school committee could not relinquish control over them.[74]

Another emerging trend has been intervention by judges who, instead of acting on the legal issue before them, have assumed the role of mediators or dispute resolvers. A Missouri court, fearful that the granting of an injunction would only exacerbate a negotiation impasse, added to a restraining order against striking teachers an order to the school board to "meet and confer" in good faith, although there was no statutory requirement for the school board to do so.[75]

Strikes

The right to engage in picketing, without interfering with access, etc., has become so accepted that there have been no reported cases on this issue in the past three or four years. Also, the once raging controver-

·sy over the right to strike has all but disappeared from the legal scene as proponents of the right to strike have failed to win any final court battles. Should the issue emerge again, the theory opposing the view that there is no common law right to strike might be shaped from a dissent in an Idaho Supreme Court decision that viewed common law rules as evolving and flexible. On that basis, the dissent explained it would not impose the old common law rule on the legal rights of married women in our present society and, similarly, the right to strike would have to take into account the reality of the times.[76]

However, seven states do have statutes that permit strikes under certain circumstances: Alaska (only nonteaching employees of school districts), Hawaii, Minnesota, Oregon, Pennsylvania, Wisconsin, and Vermont. The Pennsylvania Supreme Court rejected a constitutional challenge to its limited right to strike law in which it was contended that strikes deprived children of their constitutional right to a public education.[77]

The area in which there may continue to be litigation is over what constitutes a strike. Subterfuges have long been revealed for what they are, as in the case of resignations by teachers, which the Florida Supreme Court viewed as not really intended to be permanent.[78] Recently, the issues have been more subtle, as in the case of teachers who did not receive pay for extracurricular activities and who refused to continue to perform such duties. A New Jersey court enjoined the "strike" because "extracurricular activities are a fundamental part of a child's education, making the supervision of such activities an integral part of a teacher's duty toward his or her students."[79]

Perhaps the right to strike is no longer a momentous issue because public managers increasingly favor giving unions the right to strike in preference to giving unions the right to take impasses to binding arbitration. This attitude may be attributable to a perception that unions will feel freer to press issues to impasse arbitration without having to take the risks that a strike poses. It may also be attributable to the growing number of states that have followed a 1968 Michigan Supreme Court decision that a strike injunction should be considered on the usual equity grounds: whether irreparable harm would occur and whether the party requesting the injunction has "clean hands," that is, in the case of a school board, whether it is free from unfair labor practices and has exhausted impasse procedures.[80] The Rhode Island Supreme Court, in embracing this theory, stated the automatic issuance of an injunction based merely on the illegality of the strike could make "the judiciary an unwitting third party at the bargaining table and potential coercive force in the collective bargaining process."[81]

The Michigan Supreme Court added another facet by holding that those striking against unfair labor practices, even if they started by strik-

ing for economic reasons, may be excused from strike sanctions.[82] Consequently, under such judge-made rules, "illegal" strikers have greater rights than strikers in states that statutorily permit strikes because most state statutes allowing strikes prohibit strikes based on an employer's unfair labor practices. Instead of equity grounds, "clean hands," or other such concepts, a strike is permitted only when there is no harm to the public health or safety (although states differ in their precise formulations).

Another subject once controversial but now dormant is the enforceability of a strike settlement regardless of the legality of the strike. Generally, such a settlement will be construed and enforced in accordance with customary contract law.[83]

Two issues that may receive judicial attention include civil action damages caused by an illegal strike and contractual provisions prohibiting strike actions. The Michigan Supreme Court has refused to recognize a course of action in damages for an illegal strike, holding that a new cause of action would unsettle an already precarious labor-management balance in the public sector.[84] A school board's attempts to legally protect itself from strikes through contractual arrangements fared better. Recently, the Illinois Supreme Court upheld the validity of individual teacher contracts that provided higher salaries for those who signed a provision that they would refrain from participation in any work stoppage, sit-in, or strike. The court explained that since the public policy against strikes "has been frequently and blatantly ignored," a contractual no-strike clause is a reasonable and practical consideration to reduce the risk of untoward expenses caused by strikes.[85]

Sunshine or Open Meeting Laws

"Sunshine" laws or "open meeting" laws have spawned much litigation and it is likely to continue. The problem arises out of the conflict between the requirement that local public bodies in open public meetings act on bargaining proposals and the highly private nature of the collective bargaining process. A variety of rulings have resulted. A North Dakota school board, which engaged in private but judicially supervised negotiation sessions, was excused from its failure to allow public attendance because it publicly disclosed the content of the negotiation sessions.[86] The Delaware Supreme Court upheld the action of a school board in seeking a temporary restraining order against a threatened teacher strike, although the board meeting was closed to the public.[87] However, a Kentucky court held that reports or status briefings to the school board by an assistant superintendent on his dealings with two competing unions were not entitled to privacy.[88]

Reflective of the incompatability between sunshine laws and collective bargaining is the case in which a Minnesota lower court, viewing

open meeting laws literally, held that mediation had to be conducted in public. The state supreme court reversed that decision because it was impossible to conduct mediation under such circumstances.[89]

Concluding Note

The cases used as illustrations involve education employees. However, courts and PERBs rely heavily and frequently on cases involving non-education employees, on cases from the private sector, and even on cases from other jurisdictions in deciding issues raised by public school employers or their employees.

Illustrative of the reliance on other states, a Pennsylvania court had to rule on whether an arbitrator properly sustained grievances by teachers who were denied renewals of contracts to be advisors to student extracurricular activities. Based on rulings in cases decided in Delaware, Minnesota, and Washington that teachers when acting in the capacity of advisors are not professional employees and as such are not covered by the collective bargaining agreement, the court did not defer to the arbitrator.[90] Similarly, the Washington Court of Appeals looked to decisions in Florida, Oregon, and Wisconsin in concluding that an order of the state PERC directing an election is not a "final decision" subject to review under the state administrative procedures act.[91] In other words, in both cases the issues were ones of specific construction and not of broad generality, and yet decisions of other states were instructive.

New York law requires, when the state PERB makes a decision about unfair labor practice, that

> fundamental distinctions between public and private employment should be recognized, and no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent.

Nevertheless, the PERB relied heavily on NLRB precedent and was attacked by a school board for the disregard of the quoted provision. A New York court upheld the PERB decision, stating "the wealth of experience in the private sector need not be completely disregarded" and that such decisions may properly be used as a guide.[92]

Footnotes

1. The states with laws that sanction collective bargaining are: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Washington, and Wisconsin. Some of these

jurisdictions have laws that grant minimal rights with loose or no enforcement mechanisms. Others are comprehensive and even permit the right to strike. Ohio has enacted a law that will go into effect 1 April 1984.

2. 398 F.2d 287 (7th Cir. 1968).
3. 391 U.S. 563 (1968).
4. 431 U.S. 209 (1977) (*infra* note 34 and accompanying text).
5. Newark Teachers Ass'n v. Newark City Bd. of Educ., 444 F. Supp. 1283, 1285 (D. Ohio 1978).
6. Due process rights are discussed in chapter 4.
7. Memphis American Fed'n of Teachers, Local 2032 v. Board of Educ., 534 F.2d 699 (6th Cir. 1976).
8. Perry Local Educators' Ass'n v. Hohlt, 652 F.2d 1286 (7th Cir. 1981).
9. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 103 S. Ct. 743 (1983).
10. Cary v. Board of Educ., 425 F. Supp. 945 (D. Colo. 1977).
11. 598 F.2d 535 (10th Cir. 1979).
12. *See, e.g.*, Board of Educ. v. Nyquist, 404 N.Y.S.2d 710 (App. Div. 1978), in which the constitutional right of a tenured teacher to receive pay pending the resolution of disciplinary proceedings was waived by a collective bargaining agreement.
13. 429 U.S. 274 (1977).
14. Wright Line Inc., 251 NLRB 150, 105 LRRM 1169 (1980).
15. 426 U.S. 833 (1976).
16. *Id.* at 855.
17. *See, e.g.*, City of Macon v. Marshall, 439 F. Supp. 1209 (M.D. Ga. 1977).
18. The lead case, although only by a lower state court, is *Chicago Division of the Illinois Education Association* v. *Board of Education*, 222 N.E.2d 243 (Ill. App. 1966).
19. Cleveland City School Dist. v. Cleveland Teachers Union, 427 N.E.2d 540 (Ohio App. 1980).
20. Richland Educ. Ass'n v. Richland School Dist., 418 A.2d 787 (Pa. Commw. 1980).
21. Erie Cty. Area Voc.-Tech. School v. Pennsylvania Labor Relations Bd., 417 A.2d 796 (Pa. Commw. 1980).
22. Baker Bus Serv. v. Keith, 416 A.2d 727 (Me. 1980).
23. Soy City Bus Serv., 249 NLRB No. 167, 104 LRRM 1269 (1980).
24. Arrowhead United Teachers Org. v. Wisconsin Employment Relations Comm'n, 1981-83 PBC ¶37,359 (Wis. Cir. Ct. 1981).
25. In re Nashua Ass'n of School Principals, 398 A.2d 832 (N.H. 1979).
26. Norbeck v. Community School Dist., 545 F.2d 63 (8th Cir. 1976).
27. Belanger v. Matteson, 346 A.2d 124 (R.I. 1975), *cert. denied*, 424 U.S. 968 (1976).
28. Trinque v. Mount Wachusett Commun. Faculty Ass'n, 437 N.E.2d 564 (Mass. App. 1982).
29. *See, e.g.*, Offutt v. Montgomery Cty. Bd. of Educ., 404 A.2d 281 (Md. App. 1979).
30. School Comm. of Brockton v. Massachusetts Comm'n Against Discrimination, 386 N.E.2d 1240 (Mass. 1979).
31. Pennsylvania Labor Relations Bd. v. Eastern Lancaster Cty. Educ. Ass'n, 427 A.2d 305 (Pa. Commw. 1981).

32. 429 U.S. 167 (1976).
33. 427 A.2d at 309.
34. Milwaukee Fed'n of Teachers, Local No. 252 v. Wisconsin Employment Relations Comm'n, 266 N.W.2d 314 (Wis. 1978).
35. 431 U.S. 209 (1977).
36. Jefferson Area Teachers Ass'n v. Lockwood, 433 N.E.2d 604 (Ohio 1982).
37. *Compare* Anderson Fed'n of Teachers, Local 519 v. Alexander, 416 N.E.2d 1327 (Ind. App. 1981), *with* White Cloud Educ. Ass'n v. Board of Educ., 300 N.W.2d 551 (Mich. App. 1981).
38. Threlkeld v. Robbinsdale Fed'n of Teachers, 74 L.Ed.2d 40, 111 LRRM 2528 (1982).
39. *See, e.g.*, Kentucky Educators Pub. Affairs Council v. Kentucky Registry of Election Finance, 110 LRRM 2398, 677 F.2d 1125 (6th Cir. 1982) (finding that such a system did not coerce teachers).
40. City of New Haven v. Connecticut State Bd. of Labor Relations, 410 A.2d 140 (Conn. Super. Ct. 1979); *see also* Evansville-Vanderburgh School Corp. v. Roberts, 405 N.E.2d 895 (Ind. 1980) (teachers' knowledge of a new evaluation plan being formulated did not trigger the union's obligation to request negotiations).
41. General Drivers Union Local 346 v. Independent School Dist. No. 704, Proctor School Bd., 283 N.W.2d 524 (Minn. 1979); *see also* Van Buren Pub. School Dist. v. Wayne Cty. Circuit Judge, 232 N.W.2d 278 (Mich. App. 1975) (rejecting as a defense the economic plight of the school district).
42. Dodge City NEA v. Unified School Dist. No. 443, 635 P.2d 1263 (Kan. App. 1981).
43. Caldwell-West Caldwell Educ. Ass'n v. Caldwell-West Caldwell Bd. of Educ., 435 A.2d 562, 566 (N.J. Super. Ct. App. Div. 1981).
44. Spencerport Transportation Ass'n v. New York PERB, 436 N.Y.S.2d 43 (Sup. Ct. App. Div. 1981).
45. Chicago Principals Ass'n v. Board of Educ. of City of Chicago, 406 N.E.2d 82 (Ill. App. 1980).
46. Board of Educ. v. Chicago Teachers Union, Local No. 1, 402 N.E.2d 641 (Ill. App. 1980).
47. Oliver v. Kalamazoo Bd. of Educ., 498 F. Supp. 732 (W.D. Mich. 1980).
48. Jerviss v. Independent School Dist. No. 294, 273 N.W.2d 638 (Minn. 1978).
49. Lincoln Cty. Educ. Ass'n v. Lincoln Cty. School Dist. No. C-64-78 (Ore. Employment Relations Bd. 1979).
50. Minneapolis Fed'n of Teachers Local 50 v. Minneapolis Special School Dist. No. 1, 258 N.W.2d 802 (Minn. 1977).
51. Marshalltown Educ. Ass'n v. Iowa PERB, 299 N.W.2d 469 (Ia. 1980).
52. Superintending School Comm. v. Bangor Educ. Ass'n, 433 A.2d 383 (Me. 1981).
53. Yonkers City School Dist. v. Yonkers Fed'n of Teachers, 353 N.E.2d 569 (N.Y. 1976).
54. Van Buren Pub. School Dist. v. Wayne Cty. Circuit Judge, 232 N.W.2d 278 (Mich. 1975).
55. Chambersburg Area School Dist. v. Pennsylvania Labor Relations Bd., 430 A.2d 740 (Pa. Commw. 1981).

56. Board of Educ. v. Associated Teachers of Huntington, 30 N.Y.S.2d 122 (N.Y. 1972).
57. Board of Educ. v. Frey, 392 A.2d 466 (Conn. 1978).
58. Donnellan v. Mt. Lebanon School Dist., 377 A.2d 1054 (Pa. Commw. 1977).
59. Acting Supt. of Liverpool Cty. School Dist. v. Unified Liverpool Faculty Ass'n, 399 N.Y.S.2d 189, 192 (N.Y. 1977).
60. *See, e.g.*, South Colonie School Dist. v. Longo, 43 N.Y.2d 136 (1977).
61. Board of School Dir. v. Maine School Admin. Dist. No. 36 Teachers Ass'n, 428 A.2d 419 (Me. 1981).
62. *See, e.g.*, Enlarged City School Dist. v. Troy Teachers Ass'n, 434 N.Y.S.2d 761 (App. Div. 1980).
63. School Comm. of Danvers v. Tyman, 360 N.E.2d 877 (Mass. 1977); *see also* Board of Educ. v. Middle Island Teachers Ass'n, 407 N.E.2d 411 (N.Y. 1980).
64. Coventry Teachers Alliance v. Coventry School Comm., 417 A.2d 886 (R.I. 1980); *see also* Trinity Area School Dist. v. Trinity Area Educ. Ass'n, 412 A.2d 167 (Pa. Commw. 1980).
65. Sergeant Bluff-Luton Educ. Ass'n v. Sergeant Bluff-Luton Commun. School Dist., 282 N.W.2d 144 (Ia. 1979).
66. Port Jefferson Station Teachers Ass'n v. Brookhaven Comsewogue Union Free School Dist., 383 N.E.2d 553, 554 (N.Y. 1978).
67. Sonoma Org. of Pub. Employees v. County of Sonoma, 152 Cal. Rptr. 903, 909 (Cal. 1979).
68. Boston Teachers Union Local 66 v. City of Boston, 416 N.E.2d 1363 (Mass. 1981).
69. Board of Educ. of City of Chicago v. Chicago Teachers Union Local 1, 430 N.E.2d 1[illegible] (Ill. 1981).
70. Carter Cty. Bd. of Educ. Comm'rs v. American Fed'n of Teachers, 609 S.W.2d 512 (Tenn. App. 1980). *But see*, Town of Scituate v. Scituate Teachers Ass'n, 296 A.2d 466 (R.I. 1972).
71. Superintending School Comm. of City of Bangor v. Bangor Educ. Ass'n, 433 A.2d 383, 387 (Me. 1981).
72. In re Levy Cty. School Bd., Florida PERC Order No. 79-D-188 (1979).
73. *See* Galloway Twp. Bd. of Educ. v. Galloway Twp. Educ. Ass'n, 393 A.2d 218 (N.J. 1978); In re Appeal of Cumberland Valley School Dist., 100 LRRM 2050 (Pa. 1978).
74. School Comm. v. Boston Teachers Union Local 66, 363 N.E.2d 485 (Mass. 1977).
75. Parkway School Dist. v. Provaznik, 617 S.W.2d 489 (Mo. App. 1981).
76. Oneida Cty. v. Oneida Educ. Ass'n, 567 P.2d 830, 836-37 (Idaho 1977) (Bakes, J., dissenting).
77. Butler Area School Dist. v. Butler Area Educ. Ass'n, 391 A.2d 1295 (Pa. 1978).
78. Pinnellas Cty. Classroom Teachers v. Board of Pub. Instruction, 214 So. 24 (Fla. 1968).
79. Board of Educ. v. Asbury Park Educ. Ass'n, 368 A.2d 396 (N.J. Super. 1976).
80. School Dist. v. Holland Educ. Ass'n, 157 N.W.2d 206 (Mich. 1968).

81. School Comm. v. Westerly Teachers Ass'n, 299 A.2d 441, 446 (R.I. 1973); *see also* Timberlane Regional School Dist. v. Timberlane Teachers, 317 A.2d 555 (N.H. 1974); Rockwell v. Board of Educ. of School Dist. of Crestwood, 227 N.W.2d 736 (Mich. 1975).
82. Rockwell v. Board of Educ. of School Dist. of Crestwood, 227 N.W.2d 736 (Mich. 1975).
83. *See* Hawaii State Teachers Ass'n v. Hawaii PERB, 590 P.2d 993 (Hawaii 1979).
84. Lamphere Schools v. Lamphere Fed'n of Teachers, 252 N.W.2d 818 (Mich. 1977).
85. Bond v. Board of Educ., 408 N.E.2d 714 (Ill. 1980).
86. Dickinson Educ. Ass'n v. Dickinson Pub. School Dist. No. 1, 252 N.W.2d 205 (N.D. 1977).
87. Wilmington Fed'n of Teachers v. Howell, 374 A.2d 832 (Del. 1977).
88. Jefferson Cty. Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. App. 1977).
89. Minnesota Educ. Ass'n v. Bennett, 391 N.W.2d 395 (Minn. 1982).
90. Greater Johnstown Area Voc.-Tech. School v. Greater Johnstown Area Voc.-Tech. Educ. Ass'n, 426 A.2d 1203 (Pa. Commw. 1981).
91. Renton Educ. Ass'n v. Washington PERC, 603 P.2d 1271 (Wash. App. 1979).
92. Saratoga Springs City School Dist. v. New York State PERB, 416 N.Y.S.2d 415 (App. Div. 1979). *See also*, "Is Looking Up Case Precedent in Other Jurisdictions Worthwhile?" *Journal of Law and Education* 6 (April 1977): 205-228.